From: Girard Tunney [mailto:GTunney@tninvestors.com]
Sent: Friday, April 10, 2009 1:09 PM
To: LLPComments
Subject: Comment on the Legacy Loans Program

To Whom It May Concern,

Thank you for the opportunity to provide our comments pertaining to the Legacy Loan Program. True North Management Group is currently considering several potential ways to participate. The principals at True North have participated as investors and advisors in similar programs in both the U.S. and internationally over the past 20 years. Our comments are as follows:

1. Which asset categories should be eligible for sale through the LLP? Should the program initially focus only on legacy real estate assets or should any asset on bank balance sheets be eligible for sale? Are there specific portfolios where there would be more or less interest in selling through the LLP?

   Various pools should have similar characteristics (i.e. residential or commercial pools) and there will be increased flexibility on pool characteristics if the financing is structured as a "cash flow" note. There should be some consideration on a case-by-case basis as to geographical concentration and related impact it will have on risk assessment in attracting bidders. Further, from a bidding perspective, there needs to be a cut-off date where cash flow or sale proceeds would need to be transferred to the purchaser.

2. Should the initial investors be permitted to pledge, sell or transfer their interests in the PPIF? If so, how should the FDIC ensure that subsequent investors meet the program's criteria for investors?

   Approved pledges and transfers should be permitted.

3. What is the appropriate percentage of government equity participation which will maximize returns for taxpayers while assuring integrity in the pricing by private investors? How would a higher investment percentage on the part of the government impact private investment in PPIFs? Should the amount of the government's investment depend on the type of portfolio?

   Regardless of portfolio type**,** government ownership should be no more than 49**%.** Investment management discretion should reside entirely with the private investor. The FDIC oversight requirements and Treasury partnership terms will directly influence price and the willingness to bid.

4. Is there any reason that investors' identities should not be made publicly available?

   Personal identities should not be released.

5. How can the FDIC best encourage a broad and diverse range of investment participation? How can the FDIC best structure the valuation and bidding process to motivate sellers to bring assets to the PPIF?

   Regardless of the size or characteristic of the portfolio, few will participate and spend the due diligence time and money needed to bid if there is a high probability of a no-trade (in the RTC days, due diligence cost would often reach $500K-$1MM per bid). If a bank introduces a pool of assets to be sold, there should be a penalty or fee paid if there is a no-trade. Any pre-bid valuation information developed for the pool should be shared. This will help to ensure investors that the banks are serious sellers. As in the RTC days, the advisors will likely develop a Derived Investment Value (DIV). Minimum reserve prices could be set as a percentage of DIV. Bidders will expend due diligence time and money, if upon an initial review of the valuation information they perceive there to be a good chance of coming close to the DIV. The best way to attract the sellers is to structure the partnership and the financing in a way that will attract the most bidders and the highest price.

6. What type of auction process facilitates the broadest investor participation? Should we require investors to bid on the entire equity stake of a PPIF, or should we allow investors to bid on partial stakes in a PPIF? If the latter, would a Dutch auction process or some other structure provide the best mechanism for bridging the potential gap between what investors might bid and recoverable value? If multiple investors are allowed to bid through a Dutch auction, or similar process, how should asset management control be determined?

   A sealed bid auction process including qualified bidders and a high degree of certainty that the offerings will result in a sale (not withdrawn) will attract more participants. The sale of minority partial interests to unrelated parties (with an open question of control) should not produce the highest sale price.

7. What priorities (i.e., types of assets) should the FDIC consider in deciding which pools to set for the initial PPIF auctions?

   Selling banks should make available pools of assets based upon objectives established between them and the FDIC. However, as noted in the response to Question #1, a “cash flow” note will provide the greatest level of flexibility.

8. What are the optimal size and characteristics of a pool for a PPIF?

   Characteristics should be segmented by property type and location of the collateral. Each auction should have smaller pools with DIVs of about $5 to $30 million to facilitate smaller investor participation.

9. What parameters of the note and its rate structure would be essential for a potential private capital investor to know at the time of the equity auction to provide equity?

   The more that is known about the seller financing being offered, the better. The financing should be structured as a "cash flow" note that provides enough term, with extension features if necessary, to adequately liquidate all the assets in the pool. Additionally, terms should permit, at the very least, distributions needed to cover tax obligations and reasonable overhead of the managing partner.

10. Would it be preferable for the selling bank to take a note from the PPIF in exchange for the pool of loans and other assets that it sells? Alternatively, what would be the advantages and disadvantages of structuring the program so that the PPIF issues debt publicly in order to pay cash to the selling bank? Would a public issuance of debt by the PPIF limit its flexibility compared to the issuance of a note to a selling bank? In return for its guarantee of the debt of the PPIF, the FDIC will be paid an annual fee based on the amount of debt outstanding. Should the guarantee fee be adjusted based on the risk characteristics of the underlying pool or other criteria?

Due to the restrictive requirements of a public market debt offering, it would be preferable and more likely valuable for the selling bank to receive as consideration a note. The utilization of seller financing will facilitate timely sale execution, and afford more flexibility in setting terms, rate, and other financing conditions.

11. Should the program include provisions under which the government would increase its participation in any investment returns that exceed a specified trigger level? If so, what would be the appropriate level and how should that participation be structured?

    We believe that profits should be a split based on ownership percentage. However, a logical argument could be advanced that an incentive arrangement over a specific trigger return for the private investor would incentives superior performance.

12. Should the program permit multiple selling banks to pool assets for sale? If so, what constraints should be applied to such pooling arrangements? How can the PPIF structure equitably accommodate participation by smaller institutions? Under what process would proceeds be allocated to selling banks if they pool assets?

    This is likely not a significant issue to the investor. However, valuations performed for the FDIC should be used to establish the percentage interest that an individual bank will receive from the sale proceeds in a given pool involving some of its assets. This would suggest that each bank would need to agree to a reserve price for the entire pool prior to auction.

13. What are the potential conflicts which could arise among LLP participants? What structural arrangements and safeguards should the FDIC put into place to address or mitigate those concerns?

    These can be dealt with in the Reps and Warranties. Certain key Reps and Warranties that will need to be addressed which can directly influence the price being paid involve things such as environmental considerations, instances of fraud, other litigation perhaps involving alleged lender liability, or insufficient material disclosures among others. In this light, there needs to be a clear mechanism for cure, or the ability for put-backs under these or similar circumstances.

14. What should the relative role of the government and private sector be in the selection and oversight of asset managers? How can the FDIC most effectively oversee asset management to protect the government's investment, while providing flexibility for working assets in a way which promotes profitability for both public and private investors?

    Asset management and experienced ownership can not be separated. The private investor should have complete discretion on all decisions, including asset management.

15. How should on-going servicing requirements of underlying assets be sold to a PPIF and paid for? Should value be separately attributed to control of the servicing rights?

    You can not separate ownership and servicing rights as no qualified bidder will be willing to own the asset if they do not have control. All assets should be sold servicing released, with the price paid inclusive of servicing value, if any.

16. Should data used by the independent valuation consultant, as well as results of such consultant's analysis, be made available to potential bidders? Should it be made available to potential sellers prior to their decision to submit assets to bid?

Yes for both questions. We do not see how else it could work.

Regards,

Girard B. Tunney
Principal
True North Management Group, LLC